



Federal Communications Commission
Washington, D.C. 20554

DA 05-2686

October 13 , 2005

Bruce A. Henoch, Esq.
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Re: Requests for Waiver of 47 C.F.R. § 1.2107(c)
Nevada Power Company, File No. 0002204752
Sierra Pacific Power Company, File No. 0002204776

Dear Mr. Henoch:

This letter responds to your letter of June 15, 2005,¹ which seeks a waiver of Section 1.2107(c) of the Commission's rules² to permit the late filing of long-form applications for authorization (FCC Form 601) by Auction No. 59 winning bidders Nevada Power Company (NPC) and Sierra Pacific Power Company (SPPC).³ For the reasons stated below, we grant the requested waiver.

Background. Section 1.2107(c) and the *Auction No. 59 Closing PN*⁴ required NPC and SPPC to file their long-form applications no later than June 9, 2005. However, NPC and SPPC did not file their long-form applications until June 16, 2005. Your letter explains that a few hours after the deadline had passed, Mr. Mark Pallans, administrator of the Nevada State Radio System (NSRS), contacted Commission staff informally and described the circumstances, below, surrounding his failure to timely submit these applications.⁵

In support of your request, you state that these applicants, in addition to operating electric utilities, also operate a statewide radio communications system in Nevada that serves a dual role.⁶ Specifically, in addition to providing command, control and security functions for the utilities, the statewide NSRS infrastructure also serves as the primary communications system for the Nevada

¹ Letter from Bruce A. Henoch, counsel to Nevada Power Company and Sierra Pacific Power Company, to Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau (June 15, 2005) (*Henoch Letter*).

² 47 C.F.R. § 1.2107(c).

³ NPC is the winning bidder in Market BEA153 for spectrum blocks AA and AF; SPPC is the winning bidder in Market BEA151 for spectrum blocks AF, AR, AU and AX. See Multiple Address Systems Spectrum Auction Closes: Winning Bidders Announced, *Public Notice*, DA 05-1392 (WTB rel. May 25, 2005) (*Auction No. 59 Closing PN*).

⁴ *Id.* at 1

⁵ *Henoch Letter* at 2.

⁶ *Id.* at 1.

Department of Public Safety, which includes the Nevada Highway Patrol, the Nevada Department of Transportation and several other state public safety agencies.⁷ In his role as administrator of the NSRS, Mr. Pallans is responsible for attending to operational difficulties that arise within the network, and you state that the long-form filings were delayed due to a priority public safety matter.⁸

Specifically, your letter states: “In the days immediately preceding June 9, Mr. Pallans was attending to an emergency relating to the failure of Highway Patrol dispatch consoles, which was causing Highway Patrol troopers in the southern half of the State to lose contact with their dispatchers. The efforts to resolve this problem, which was obviously an urgent priority, occupied all of Mr. Pallans’ time up to and including June 9.”⁹ When Mr. Pallans attempted to file the long-form application during the afternoon of June 9, he found he had missed the East Coast deadline.¹⁰ Finally, you state that NPC and SPPC require the use of the MAS channels won at auction “to meet expanding public safety and homeland security needs, particularly for security data and video monitoring” at numerous remote facilities.¹¹

Discussion. Ordinarily, a winning bidder that fails to file the required long-form application in a timely manner is deemed to have defaulted and is subject to the default payment set forth in Section 1.2104(g).¹² However, the Commission may, for good cause, determine that a late-filed long form application should be accepted.¹³ To obtain a waiver of the rules, NPC and SPPC must show that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and grant of the waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the specific situation, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the entity requesting the waiver has no reasonable alternative.¹⁴ An underlying purpose of post-auction application deadlines is to ensure that winning bidders satisfy the Commission’s qualification and eligibility requirements in a timely manner and so avoid “delays in the deployment of new services to the public that would result from litigation, disqualification, and re-auction.”¹⁵ As set forth below, NPC and SPPC have presented sufficient facts to show that, considered in their totality, the circumstances in the instant case meet the standard for waiver of the subject rule.

We find that granting a waiver of the long-form application deadline in this case would not disserve or frustrate the underlying purpose of the post-auction filing requirements. As an initial matter, notwithstanding the failure of NPC and SPPC to timely submit their long-form applications, we note that

⁷ See *id.*

⁸ See *id.* at 2.

⁹ *Id.*

¹⁰ See *id.*

¹¹ *Id.*

¹² 47 C.F.R. §§ 1.2104(g), 1.2107(c). See Implementation of Section 309(j) of the Communications Act, Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2388 ¶ 199 n.152 (1994) (*Competitive Bidding Second R&O*).

¹³ See 47 C.F.R. § 1.2107(c); *Auction No. 59 Closing PN* at 6.

¹⁴ See 47 C.F.R. § 1.925(b)(3). See also 47 C.F.R. § 1.3.

¹⁵ See *Competitive Bidding Second R&O*, 9 FCC Rcd at 2382 ¶ 197.

Commission records indicate that these applicants complied with all pre-auction filing requirements in Auction No. 59, including timely submission of their upfront payments, and were found to be qualified bidders. Further, following the auction, Commission records show that these applicants timely satisfied both their down payment and their final payment obligations. As NPC and SPPC timely met their down payment requirements and submitted their long-form applications soon after the filing deadline, we are satisfied that their error will not unduly delay deployment of their services to the public, and thus not undermine or frustrate the purpose of the post-auction licensing process.

We further find that grant of the waiver would serve the public interest. First, dismissal of the long-form applications filed by NPC and SPPC would prevent these companies from establishing data and video monitoring services at remote critical infrastructure facilities. We also give considerable weight to these applicants' record of prior compliance with auction-related requirements. Finally, we note that our decision comports with precedent granting relief for minor delinquencies that did not disrupt the auction process or the deployment of service.¹⁶

Although we grant NPC and SPPC a waiver of the rules that otherwise would require dismissal of their long-form applications and associated imposition of default payments, we strongly caution NPC and SPPC to take steps to ensure timely compliance with all of the Commission's auction procedures in the future. While we are sensitive to the fact that Mr. Pallans needed to attend to a priority matter, NPC and SPPC were on notice that they were responsible for timely submitting their long-form applications and thus to make adequate preparations.

For the reasons set forth above, we grant the waiver requests of NPC and SPCC. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Jeffrey S. Cohen, Deputy Chief
Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

¹⁶ See, e.g., *Silver Palm Communications, Inc.*, Order, 17 FCC Rcd 6606 (WTB, Com. Wir. Div. 2002) (Bureau granted waiver when late filing was due to applicant's inadvertence and unawareness of deadline, and licenses would provide rural areas with competitive wireless service); *City Page & Cellular Services, Inc.*, et al., Order, 17 FCC Rcd 26109 (WTB, Com. Wir. Div. 2002) (Bureau granted waivers to seven applicants, citing, for instance, one applicant's unawareness of the deadline and another applicant's misunderstanding regarding the scope of counsel's undertaking).